

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 323 of 2001
(Old No. 2520 of 1985)

Chokhe Lal Dhobi
S/o Shiv Charan
R/o Village Majra Prabhu Pal Bajpur
District Nainital. Appellant

Versus

State of Uttar Pradesh Respondent.

Shri I.D. Paliwal, learned Amicus Curiae for the appellant.
Shri Sudhir Chaudhary, learned A.G.A. for the State.

Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 374 (2) of Code of Criminal Procedure, 1973 (for brevity herein after referred as Cr.P.C.) is directed against the judgment and order dated 06.09.1985, passed in Sessions Trial No. 68 of 1984, by learned Special Judge, Nainital, whereby appellant Chokha Lal Dhobi, has been convicted under Section 307 of Indian Penal Code, 1860 (for brevity herein after referred as I.P.C.) and sentenced to rigorous imprisonment for a period of seven years. The appellant is further convicted under Section 332 of I.P.C. and sentenced to undergo rigorous imprisonment for a period of two years on that count.

2. Heard learned counsel for the parties.

3. Prosecution story in brief is that on 08.03.1984, at about 10:00 A.M., appellant Chokhe Lal first went to house of P.W. 1 Bishnu Datt Pathak, a Forest Guard and asked him to provide some wood. P.W. 3 Jamaluddin and one Prithvi Singh, were also present there. Bishnu Datt

Pathak, refused to provide wood. On this, appellant hurled abuses at the Forest Guard (Bishnu Datt Pathak). Thereafter, P.W. 1 Bishnu Datt Pathak while patrolling forest, found that appellant Chokhe Lal was taking a bundle of wood from reserved forest. On this, the Forest Guard, stopped appellant. Reacting to this, appellant, who was armed with a Patal (a sharp edged weapon), started giving blows with it on the person of Forest Guard. P.W. 2 Bhagwan Singh, who was passing through there, also witnessed the incident. After causing injuries to the person of P.W. 1 Bishnu Datt Pathak, appellant Chokhe Lal, took his cycle, leaving bundle of wood there and left the place. Shri Pathak was taken to Bazpur Civil Hospital, where his injuries were examined. P.W. 2 Bhagwan Singh, orally reported the incident to P.W. 4 Ranjit Singh, Range Officer of Bailpadaun, who in turn lodged First Information Report (Ext. A-1) with the police station Bazpur on the very day at about 3:30 P.M. A crime No. 33 of 1984 was registered against accused Chokhe Lal relating to offence punishable under Section 332/307 I.P.C. The crime was investigated by S.I. Shri Negi. During investigation, Patal (a sharp edged weapon, used in the crime) was recovered by the Investigating Officer from the possession of the accused/appellant Chokhe Lal. After completion of the investigation, a charge sheet was submitted by the Investigation Officer against the accused/appellant Chokhe Lal, for his trial, for allegedly committing offence under Section 332/307 I.P.C.

4. The Magistrate, on receipt of charge sheet, appears to have provided necessary copies to the accused, as

required under Section 207 Cr.P.C. and the case and was committed to the Court of Sessions, for trial. Learned trial court after hearing the prosecution and the defence, framed charge of offences punishable under Section 332/307 I.P.C. against accused/appellant Chokhe Lal, who pleaded not guilty and claimed to be tried. On this, prosecution got examined P.W. 1 Bishnu Datt Pathak (injured), P.W. 2 Bhagwan Singh (informant), P.W. 3 Jamaluddin (eye witness), P.W. 4 Ranjit Singh (Range Officer) and P.W. 5 Dr. Hari Om Pande (who examined the injuries on the person of Shri Pathak). The oral and documentary evidence appears to have been put to the accused, as required under Section 313 Cr.P.C. in reply to which the accused/appellant, alleged the evidence to be false and states that he has been falsely implicated due to enmity with police. After hearing the parties, the trial court found accused Chokhe Lal guilty of charge of offences punishable under Section 332 and 307 I.P.C. and after hearing on sentence, sentenced him to rigorous imprisonment for a period of seven years under Section 307 I.P.C. and rigorous imprisonment for a period of two years under Section 332 I.P.C. Aggrieved by said judgment and order dated 06.09.1985, the convict, preferred appeal before Allahabad High Court from where it has been received by transfer to this Court under Section 35 of U.P. Reorganisation Act, 2000, for its disposal.

5. Before further discussions, it is pertinent to mention here the injuries recorded in Ext. A-2 by P.W. 5 Dr. Hari Om Pande, at about 3:00 P.M. on 08.03.1984, on the person of Bishnu Datt Pathak, which are as under:-

1. Incised wound 8cm X 2 cm x bone deep, about 10 cm behind the right eyebrow in the parietal region of scalp, fresh bleeding present.
2. Incised wound 8 cm X 2 cm X 2cm on the left side of back, just above the spine of scapula.
3. Incised wound 6cm X 4cm x communicating with pleural cavity on the right side of anterior chest wall, 8 cm below the clavicle. Wound is sucking. Fresh bleeding present.
4. Incised wound 2.5cm X 2cm on the medial side of width of left forearm, Fresh bleeding present.
5. Incised wound 9cm X 1cm X bone deep present over the left hand. The wound is bisecting the web between the thumb and index finger. Fresh bleeding present.
6. Incised wound 4cm X 1cm X bone deep joint, 1cm medial parallel to wound No.1.
7. Multiple incised wound varying in size from 2.5 cm, 4cm, depth varying from skin depth to bone deep present on the dorsum with plural aspect of hand and finger.

8. **Incised wound 10cm X 2cm X bone deep, bisecting the web between the index finger and middle finger. Fresh bleeding present.**
9. **8-10 incised wounds. One overlapping the other, present on the palmer aspect of right hand. Their size varying from 2 to 5 cm X 1cm to 2cm X skin to bone deep. Fresh bleeding present.**
10. **Lacerated wound 2cm X 1cm, just above the right ankle on the lateral side of right leg. Deformity with swelling surrounding the ankle present. Fresh bleeding profuse.**

6. P.W.1 Bishnu Datt Pathak, the injured eye witness, has stated on oath that on 08.03.1984, he was posted as Forest Guard in Chanakpur of the Forest Department. At about 10:00 A.M. according to this witness, accused Chokhe Lal, came to his house in the presence of Prithvi Singh and Jamalludin (P.W.2) and asked for some wood. On being refused, he gave threat that he would see him. Thereafter, at about 1:30 P.M. when according to this witness (P.W. 1) he was patrolling the forest, he saw accused coming on a bicycle with a bundle of wood in its carrier. P.W. 1 Bishnu Datt Pathak, the Forest Guard states that he stopped accused. On this, accused Chokhe Lal, who was armed with Pathal (a sharp edged weapon), attacked the guard with Patal and caused several injuries

on his person. Statement of this witness gets corroboration from the injuries quoted above.

7. Apart from this, statement of P.W. 1 Bishnu Datt Pathak is further corroborated by the statement of P.W. 2 Bhagwan Singh and P.W. 3 Jamalludin, who also witnesses the incident.

8. Learned Amicus Curiae, argued that P.W. 2 Bhagwan Singh, is a chance witness and his evidence cannot be relied. No doubt, Bhagwan Singh (P.W. 2) is a chance witness but his presence at the spot does not appear to be doubtful, as he has clarified that he was going from his Village Bharhaini to Chanakpur. Since it is not a case of defence that the place of incident does not fall in that route, the presence of this witness cannot be said to be doubtful, particularly when his statement gets corroboration from what has been narrated by the injured eye witness. Apart from this, P.W. 2 Bhagwan Singh, had no enmity with appellant Chokhe Lal, which may make him to adduce false evidence against him. The narration of the story made by this witness is natural. Had this witness not seen the incident, he would not have gone to the Range Officer P.W. 4 Ranjit Singh to inform about the incident. This makes the testimony of the witness trustworthy.

9. Undoubtedly, Bishnu Datt Pathak being the Forest Guard, was a public servant and by assaulting him and inflicting injuries on his person to commit his murder, the appellant not only attempted to commit murder of Bishnu

Datt Pathak but also voluntarily caused hurt to deter the public servant from his duty. As such, this Court is in agreement with the trial court that the prosecution has successfully proved the charge of evidence punishable under Section 332 and 307 I.P.C. against the accused/appellant Chokhe Lal.

10. However, on the point of sentence, on examination of lower court record, it is found that after the arrest, accused/appellant remained in jail till 24.09.1985. He was not on bail during the trial. Sentencing him to the period undergone would have met the ends of justice. Total period spent in jail during the trial, and before the appellant was granted bail by the High Court, he had served out 1 ½ year in jail. In the circumstances, while maintaining the conviction of the appellant under Section 332 and 307 I.P.C., this Court is of the view that the sentence awarded to the appellant may be reduced to six months under Section 332 and to the period of one year under Section 307 I.P.C. Therefore, this appeal on the point of conviction is dismissed and on the point of sentence partly allowed, reducing his sentence, as observed above. The appellant is on bail. He need not to surrender.

Dt. 01.11.2006
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(Prafulla C. Pant, J.)